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NATIONAL INCORPORATION LAWS FOR TRUSTS.*

Premise.—Permit me to premise, perhaps outline, in three propositions the topic assigned me. In the first place, Alexander Hamilton in 1796 said:

"We are laboring hard to establish in this country principles more and more NATIONAL, and free from all foreign ingredients, so that we may be neither 'Greeks nor Trojans,' but truly Americans."

In this utterance he established a precedent for the intelligent thought of to-day in regard to the advancement of corporate legislation.

The trend of affairs is to the establishment of principles more and more national, and free from sectional ingredients, so that we may be neither Bostonians nor New Yorkers, but truly Americans with respect to corporate measures.

The second suggestion is that interstate warfare unfavorably affecting trade and commerce has in times past more than frequently resulted in federal assumption of jurisdiction over the matters in dispute as involving the public welfare.

To this, as a third proposition, it may be added that whenever in the history of this nation any force truly national, affecting or relating to the welfare of the country, has been found to have outgrown the swaddling clothes of the *express* powers of the Constitution, and, as a national force, on the one hand to be entitled to the protection of national law, and on the other hand properly subject to the uniformity and control of a federal law, the American people

*Address of James B. Dill, Esq., before the Seminary in Economics of Harvard University, March 10th, 1902.

have always overridden mere technicalities and have availed themselves of the *implied* power of the Constitution.

INTRODUCTION.

National Corporations.—I view with favor the enactment of a National Incorporation Act as distinguished from a national control of state-created corporations.

The country demands uniform corporate legislation, formulated upon the good of the country as a whole, and not sectional legislation, state against state.

Such national law might be along the lines of the National Banking Act, not abridging the powers of the state to create local corporations, permissive, not mandatory, for the organization of corporations, national in extent, the business of which relates to trade with foreign countries or between states.

Affording the protection of the national government against conflicting state legislation and local political enactments, and—what is equally important—enforcing well-considered regulations and wholesome restrictions incidental to national institutions, analogous to the provisions of the national banking system.

Whether or not the national government should by legislation eventually discourage the organization of state companies other than local, as in the case of state banks, is perhaps a matter for future consideration.

A national corporation act should be based upon the public demand for cleaner legislation and for purer politics premised upon the assumption that it is more feasible to obtain from the national body proper regulation and control than in and from various state legislatures, some of which are to-day engaged in a competitive warfare for revenue from corporations.

It is only necessary to suggest that proper control and proper restrictions, provisions for publicity and similar requirements, would be more readily maintained under a federal act, less subject to evasive acts, because a national bill would attract the attention of the nation and could not be passed with the secrecy and despatch of a state act.

These views invite a brief survey of the practical situation of to-day.

TRUSTS ARE A FORCE NATIONAL.

Definition of Trusts.—While the word "trust" has not become generic to the extent that it is defined by all alike, nevertheless, for the purposes of this discussion, one may be satisfied to accept that term as meaning a corporate aggregation engaged in business other

than merely local, and not confined in its operations and scope to the state of its creation.

It is proper to include commercial combinations, financial aggregations and every organization, corporate or otherwise, which tend to concentration and consolidation of force.

The Trust Is a Force.—With this definition I pass to the proposition that the trust, so-called, has advanced beyond the province of mere academic discussion.

The question of its origin and its growth has become and must be regarded as a matter for the historian rather than an essential element of this discussion.

Whatever be the promoting or direct cause of combinations, industrial or financial, they have become, and to-day are, an integral element in the struggle of this nation for commercial supremacy.

Nor is this tendency to combination, to concentration, to the aggregation of power as yet at its height. Its progress will according to all indications be as great in the future as it has been during the last decade.

The advantages and at the same time the dangers of these gigantic combinations have up to the present time been outlined rather than actually demonstrated.

Discussion has been thus far based more upon conjecture than upon actual experience.

Not only Americans, but foreigners also have begun to realize and to recognize the national force and the international power of this movement.

Viewing the subject on the one hand from the standpoint of undoubted advantage to the country, some are inclined to advocate the free passage of combinations throughout the United States and the doing away with legal limitations upon their progress and growth.

They urge the liberalization of our corporation laws, without regard to proper control and wholesome restrictions.

Having in mind, on the other hand, the potential dangers involved in the possession of power of any kind, others are inclined to advocate devoting the entirety of the legislative energy to the repression and suppression of the trust movement; their conviction being that the centralization and enlargement of power accompanying the formation of vast combinations must, unless brought under rigid restriction, present more than merely a menace to the well-being of the country.

The safe principle, however, is found in the statement that *the "Trust Problem" is not the problem of abolishing industrial combinations, but of properly applying the principles which they represent, recognizing that they are a power national in extent and a necessary subject of federal jurisdiction.*

The basis of discussion as to the legal control of combinations must be, not primarily utility, and secondarily control, but utilization and control standing *pari passu.*

A realization both of the utility and of the dangers is essential to an intelligent appreciation of the "Trust Problem."

Trusts are a National Force.—The trusts of to-day are a force and a power national in extent.

National in extent in that their business extends not only throughout all of the original and acquired territory of this country, but is rapidly overleaping the boundaries of our states and possessions, entering into foreign countries and making rapid inroads into foreign markets; and national in extent also in that their financial roots extend down and into every Commonwealth and municipality of this country.

Investing stockholders of the so-called trusts and combinations are innumerable and widely scattered.

The list of stockholders of a single corporation contains over five thousand investors scattered throughout the United States.

One gives special emphasis to the term "investing stockholders" as showing the hold which these organizations have taken upon the people of this country; a safe-guarding, it is true, both for the country and for the corporation, but as well a menace to the extent that an industrial panic would not be confined to the bankers and financiers of Wall Street, but would be felt also in many villages, towns and cities throughout the United States. And the destruction of the widow's mite represents more of personal suffering than the loss of a portion of a millionaire's riches.

It has been said, and with some accuracy, that the death of a financier, controlling the policies of great industrial combinations, a man of the type of J. Pierpont Morgan, would more affect the industrial, financial and commercial interests of the United States than would the death of a President of the United States.

Be this as it may, it needs no demonstration to support the proposition that the trusts of to-day are a force national in extent, that they are a fundamental part of the commercial and financial growth of this country. Correlated with this proposition is the equally demon-

strable statement that, to the extent that power and force present advantages to this country, to the same extent must that power and force uncontrolled tend to become a menace.

Trusts are a national force and have outgrown the confines of mere state legislation.

Legal Character of Trusts.

Trusts are State-Created Corporations.—Not only are they the creation of legislation, of limited geographical jurisdiction, but in many respects the courts of the state that created them have jurisdiction of their internal affairs to the exclusion of the courts of the states into which they may go; the general rule being that, where the act complained of affects the complainant solely in his capacity as a member of the corporation, whether it be as stockholder, as director, president or other officer, and is the act of the corporation, whether acting in stockholders' meeting or through its agents, the board of directors, such action is the management of the internal affairs of the corporation, and the courts of the state which created the corporation have jurisdiction to the exclusion of the courts of other states.

It has been further held that it is immaterial that the visible, tangible property of the foreign corporation is situated in the state; that, nevertheless, all questions as to the organization of the foreign corporation, its corporate functions, who shall become its members, and what are their rights as members are matters relegated to the courts of the state which created the organization.

We thus have the rights of a Boston stockholder in a South Dakota organization determined by the judge of the South Dakota courts interpreting the statutes of South Dakota.

We have the members of the great financial combinations practically located in New York, with their millions of capital, relegated to the courts of New Jersey for a determination of their rights as stockholders.

We have the foreclosure of the properties of great trusts, properties, real and personal, in various states, ordered, decreed, modified and stayed by courts in New Jersey.

We have the United States Supreme Court referring such matters back to the states.

Regulation and Control.

Public Opinion.—Apart from the personal character of the officers in control, the great controlling influence upon the combinations is public opinion.

Public opinion is of two kinds: Unformulated, viz., that which is created by discussion, by literature and chiefly by the Press and formulated public opinion—the statutes. The latter, one would naturally assume, because of their enacting power, would be the highest form of public opinion; but to-day, under our system of state legislation, that proposition is reversed. The highest order of public opinion is the unformulated, or that public opinion which has not yet been enacted into statutes with the resulting limitations of state statutes.

Unformulated Public Opinion is Not Confined Locally. It is National.

Public Opinion (Unformulated).—It is the offspring of the best thought and integrity throughout the nation. National public opinion is the principle upon which the United States of America has stood for success and has won out in the fight.

If the best thought, if the majority of the best minds, if the integrity of intellect of this country can convince the people of the United States as a whole that certain lines of control are for the good of the people as a nation, then a national legislative body should create federal statutes certainly as wide as the interests involved, and most assuredly as broad as the public opinion which demands the law.

Such, however, is to-day not the case.

State Legislation.

Limitations on Formulated Public Opinion.—The subject is national in extent, the interests are national, the best public opinion is national, but legislation is state and sectional.

All laws are supposed to be but the formation of an intelligent public opinion based upon an understanding of the situation and a just appreciation of the interest of the parties involved.

Limitations of State Legislation.

As to corporation law public opinion to-day, when it reaches what ought to be its highest stage of efficiency as a force, becomes, under our present system of state statutes and state corporate legislation, circumscribed and limited in its efficiency.

1. Always circumscribed geographically, by the limits of the state creating the statute.

2. Generally dwarfed in its birth by the subordination of the general principle involved to the local and ofttimes political state issues.

3. Frequently limited in its application by the elimination of the question of the good of the nation and by the substitution for the welfare of the country of the interest, frequently political, quite generally

financial, of the state in question, even to the prejudice of other states.

4. Sometimes formulated as a part of a political system which looks to the good of the party, rather than to the best interests even of the state.

There is to-day no forum in which a public national opinion in regard to the great national question of trusts, their advantages or disadvantages, their uses and abuses, can be heard and the judgment of the nation formulated into a nationally created and nationally enacted public law.

All of these great and vitally important national questions are relegated to the geographical limitation, to the financial rivalry and the political systems of the states, with a result that South Dakota, West Virginia and Maine on their respective lines of policy formulate a public opinion in the shape of a statute which in its resulting effect, passes over and into the State of Massachusetts, relating to and affecting the property of the citizens of Massachusetts.

The citizen of Massachusetts who is a stockholder in a South Dakota, West Virginia, Maine or Delaware, corporation is relegated to the formulated public opinion of that state for the determination of his rights, according to the statutes and laws of that state, perhaps in disregard of public opinion, formulated or unformulated, in which he may concur, and which prevails in his own state.

We can look for no effective publicity—no effective restrictions or regulation of corporate power under a system of diverse state legislation.

Laxity of legislation as a rule fixes the standard upon the principle that "the team is no faster than the slowest horse."

Public opinion formulated into statutes, to be of the highest efficiency and to be freed from evils of subordination, must be uniform among all the states and national in extent.

Uniformity of State Legislation Impossible.

A study of the inception, the history and the growth of the corporate legislation of the respective states impresses one with the fact that the tendency of states in the matter of corporate legislation is to segregation rather than to unity, to diversity rather than to uniformity.

State Systems, etc., Differ.—Many states whose corporate system of legislation is of a high order have not only approached this system at the inception of their laws from different view-points, but have, upon that view-point, built up a legislative scheme, and also

have a thoroughly adjudicated system of case law upon this subject.

Massachusetts, Pennsylvania and New Jersey are examples.

Massachusetts strongly, Pennsylvania, perhaps, less urgently, insist upon public publicity for all corporations, public, *quasi* public or private. New Jersey, on the other hand, insists on and has consistently adhered to the principle of private publicity as being the better doctrine for business companies.

As to the issuance of stock, they differ in theory, Massachusetts more nearly taking the position of insisting upon an official state valuation for stock, while New Jersey, not permitting stock to be issued for services (the great vehicle for the transmission of water, so-called, into corporate organizations), permits the issue of stock for property or money, but compels publicity to the extent of requiring the corporation in the certificate of payment of capital stock, and thereafter in each annual report, to distinguish between that stock which is issued for cash and that which is issued for property.

By means of private publicity, every stockholder can ascertain for himself for what property the stock is issued.

Massachusetts and Pennsylvania take the stand that stock must be issued for money or money's worth, and that the state and the courts are the judges both as to the law and the fact of what is the value of the property for which stock is issued.

New Jersey takes the position that this is too dangerous for the stockholders because of the tendencies of juries and courts after a failure, looking backward, to minimize values of property; and therefore she makes as the standard the judgment of the Board of Directors as determined and declared at the time of the issue, provided that judgment is free from fraud.

New Jersey.—Honest and thorough students of economics differ as to the true standard, but New Jersey's principle is more in accord with the English doctrine in this respect.

The position of the speaker in regard to New Jersey's corporation laws is too well known to need explanation, even if it were of interest. It is, however, not inappropriate to say that I view with favor the legislative theory of private publicity and of honest valuations by directors not subsequently reviewable as to values by juries as issues of fact execpt in case of fraud, provided those valuations be always ascertainable, so that the public may know precisely for what the stock stands.

New Jersey's system of corporate legislation is often asserted to be loose and lax, but the assertion is sometimes made by those who

have not made a thorough study of the laws and decisions of that state.

The assumption that it is due solely to the so-called liberal features of New Jersey's law that she has attracted capital to her borders is a mistake. On the contrary, it is my belief that the permanency of her corporation policy, the provisions of the constitution protecting the corporate dollar from any other or further tax than the individual dollar and prohibiting special legislation and special charters, the business-like administration of her executive offices—as instanced by the fact that one Secretary of State remained as head of that important department for twenty-seven years—the intelligence, integrity and high character of both Bench and Bar, that these elements have given the public confidence in the stability and in the administration of her laws and have brought capital, business, trade and commerce within her borders, with the legitimate return by way of tax income. The success of New Jersey has led other states into the erroneous conclusion that the liberal features, so-called, of her laws have brought capital to New Jersey, and this has induced them to adopt the utility provisions of New Jersey's laws without the elements of control and regulation, which latter are an essential and permanent part of her system.

Whatever, however, may be the verdict of public opinion upon this point, the first suggestion which I have to make is that the better class of states are built up upon different systems, and that an attempt to make them uniform would necessitate a reversal of the legislative and judicial history of the state with regard to corporations—an outcome which state pride, if nothing more, tends to prevent.

The Policy of other States.—Rivalry for business creates the legislative policy of protection for domestic corporations, of antagonism and warfare against foreign corporations.

Some of the so-called charter-granting states have charters for sale.

They are looking, not only for the initial fee for the organization of the corporation, but also for the yearly return in taxes.

The trend of State legislation is sometimes to enact laws with a view to procuring pecuniary returns to the State rather than adhering to sound principles.

Corporate measures are apt to be weighed by some legislatures:

First, upon monetary scales;

Second, upon political scales;

Finally, if found satisfactory by these tests, then by the standard of propriety and integrity.

States seek to import into their own scheme of legislation provisions of the corporation laws of other states which seem to have proved attractive to corporations and to have brought business and revenue into the state.

The authors of New York's so-called "liberalizing act" laud this and that provision as being from New Jersey's law, without much attention being paid to the question whether or not the provision thus imported and thrust into New York's corporate scheme harmonizes with the rest of New York's law, or whether or not it carries with it the accompanying restrictions of New Jersey's law.

The controlling question seems to be one of immediate financial returns, of financial expediency and resulting political desirability.

In the reported hearings by a New York Legislative Committee upon Senator Krum's bill to tax foreign corporations, the issue seemed to be whether New York could take over New Jersey's income from corporations; could keep its corporations at home and bring others into the state.

Speaking of the proposed Krum bill to tax foreign corporations, a New York corporation lawyer is reported to have said before the Senate Committee:

> "I want to say to you that if you fix it so corporations can't *luxuriate* here, they will find other fields in which they may flourish."
>
> Chairman Krum: "Didn't we liberalize the incorporation laws at the last session?"
>
> Mr. White: "Yes, and I helped you to do it."
>
> Chairman Krum: "So you did. *And now it looks very much as if we had bought a gold brick.* The promises that you held out to us have not been fulfilled."—(New York *Times,* January 22, 1902.)

The New York illustration is used only because it is near home. Few states are so free from fault in this respect that they can afford to cast the first stone.

Legislation for Revenue.

Special legislation for the benefit of any particular corporation, because of the revenue the corporation brings or is expected to bring to the state, is open to the charge of being legislation for a price, especially if the character of such legislation be manifestly unsound in principle.

The support of the legislature as a body given to the passage of an act in consideration of a moneyed return actual or prospective, to the state, provided the act is otherwise unjustifiable, leads to the charge of being state legislation for a price, and to the further charge that this class of legislation tends to corruption on the ground that an example is set by the state, which is sometimes followed by the individual legislator in individually legislating for a price.

It is needless to add that this statement is not always well founded; but the fact that such legislation is open to suspicion and gives rise to such charges is a good reason for its avoidance if not its condemnation.

The granting of special charters to individual corporations, with special or unusual privileges and immunities, tends to create public distrust, not only respecting the integrity of the legislation, but also as to the freedom from bias of the individual legislator.

As I have before said, one of the commendable features of New Jersey's corporate legislation scheme is that the constitution of that state prohibits such special legislation with respect to corporations, and compels all corporations of a given class to incorporate under the same act, with the same rights and privileges and subject to the same restrictions and control.

However, in the discussion of the tendencies of this certainly objectionable class of legislation, a distinction must be observed regarding state legislation, not special, but for legitimate tax revenue.

The fostering of legitimate capital and the inducing of incorporated capital to locate within the borders of the state are not only legitimate but commendable in every way.

The securing of proper returns to the state by way of taxes is eminently proper, and economically commendable.

STATE WARFARE.

The Tendency is to State Warfare.—In corporation matters in many instances the tendency is to interstate warfare, each state assuming a belligerent attitude towards foreign corporations and endeavoring to protect its own corporations.

We find some charter-granting states legislating for the following classes of corporations:

(1) Corporations organized primarily for the purpose of doing business outside of the state;

(2) Corporations organized for the purpose of doing without the state business which is forbidden to be done within the state which created them;

(3) Those formed for the purpose of doing their business as an entirety outside of the state, being specifically forbidden by their charters from operating or carrying on such business in the state which created them;

(4) For the express purpose of doing business in evasion, sometimes in violation, of the law of a state into which they propose to go and to operate.

On the other hand, we have states attempting to tax property of corporations—as the state of New York in the case of the United Verde Copper Company (People *ex rel.* United Verde Copper Co. *v.* Feitner, 54 App. Div., 217),—not within their limits and therefore taxed elsewhere; and we have some states attacking domestic and foreign corporations with laws tending to make it difficult to associate capital for commercial operations too large for individuals. individuals.

Pennsylvania.—As early as 1866 the state of Pennsylvania granted a special charter to the "New York California Vineyard Company," giving it power to do the business set out in its charter "in any of the United States or territories thereof *except in the state of Pennsylvania* the same as a natural person."

Subsequently, in 1870, the name of the company was by special act changed to the "Land Grant Railway and Trust Company," and it was given banking powers to be exercised "in any state, territory or country *except the state of Pennsylvania.*"

The state of Kansas thrust out this corporation from its borders, refusing to allow it to do business there.

The Supreme Court, 6th Kansas, 255, said:

"At the very creation of this supposed corporation its creators spurned it from the land of its birth as illegitimate and unworthy of a home among its kindred and sent it forthwith a wanderer on foreign soil. Is the state of Kansas bound by any kind of courtesy or comity or friendship, or kindness to Pennsylvania to treat this corporation better than its creator (the state of Pennsylvania) is bound?"

"No rule of comity will allow one state to *spawn* corporations, to send them forth into other states to be nurtured and do business there when the state first among states will not allow lhem to do business within its own boundaries."

New Jersey.—In the year 1897, New York introduced certain legislation tending to make the stockholders and directors of foreign corporations personally liable for the debts of the company in New

York, provided, and if, the corporation failed to conform to certain New York requirements.

New York attempted forcibly to domesticate foreign companies under penalty of practical withdrawel of the corporate shield of protection to stockholders and officers, imposing a contract liability on stockholders and directors.

This was understood to be aimed specially at the numerous New Jersey corporations doing business in New York.

As a counter move, a bill was drawn, passed by the New Jersey legislature and signed by the Governor, all within forty-eight hours, making it the law in New Jersey that such corporate liabilities created by the statutes of other states were not enforcible in the State of New Jersey.

The passage of this act was sufficient to end the usefulness of the New York acts.

New York.—New York has its railroad and transportation laws and forbids local railroads, telephone or telegraph companies to organize under any other act.

The state of New York refuses to give such organizations power to do business in New York state unless they accept the conditions and restrictions of the railroad and transportation laws.

There is, however, now pending in the Legislature of New York a bill providing that it shall be lawful to incorporate any company under the Business Corporation Law "for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines" outside of this (New York) state.

The case of New York is cited because it is the latest among the Eastern States to sell telephone, telegraph and railroad charters free from the ordinary restrictions thrown about such corporations, provided their operations shall be removed and kept out of the state of New York, and because this case is indicative of the tendency of the times.

Connecticut.—The state of Connecticut, too, is not far behind in creating corporations to do outside of the state business which she will not permit to be done within her borders.

Connecticut recently created by a special charter a banking company with power to hold its stockholders' meetings anywhere in the world. In addition to banking powers the corporation was given power to transact the business of merchants, manufacturers, miners, commission merchants, agents of every kind, shippers, builders, financiers, brokers, contractors and concessionaires," to construct

private or public works of any sort or kind, but *"outside the state of Connecticut;"* to do a general transportation and railroad business *"outside the state of Connecticut;"* to say nothing of power to act as common carrier and as express forwarders, *all outside of the state of Connecticut.*

As a limitation applicable to Connecticut and to no other state, the charter provides that before a corporation shall conduct a banking and trust business in Connecticut, it shall obtain a license or permit to do such business in the state of Connecticut and, to the extent that it does business in Connecticut, be subject to the supervision of the banking commissioners. So far as Connecticut was concerned or Connecticut citizens were involved, the welfare of the state was carefully guarded by the provision that the broad powers conferred upon the corporation of engaging in every kind of enterprise were limited to operations outside of Connecticut.

"No publicity" was the rule of this company. The charter provides that—

> "No stockholder shall have any right of inspecting the ac-
> "counts or books or documents of the corporation, except as
> "conferred by statute or authorized by the directors, or by a res-
> "olution of the stockholders."

General Principles.—But to depart from specific cases.

Many states seem neither to look beyond their own borders nor to legislate for the good of the country at large or the good of the commercial movement of the times.

Few states in their corporate legislation seem to aim to assist the United States as an entirety, in its struggle for the commercial supremacy of the world.

On the contrary, many states are willing to enrich their own coffers at the expense of the advancement of the nation.

The line of demarcation between the so-called charter-granting states and the more conservative states is rapidly being eradicated; the financial success of charter-granting states is tending to break down the conservative legislation of many other states.

It is said that Massachusetts capital will not incorporate under the laws of Massachusetts, and, therefore, Massachusetts should amend its corporation laws.

Is the vital question whether Massachusetts capital will incorporate under Massachusetts' laws or whether Massachusetts' laws are right or wrong?

Is it a question of financial expediency or of principle?

It needs no argument to enable the student of corporate legislation to come to the conclusion that the drift of state legislation is not towards uniformity, but towards interstate warfare.

This contest between states has reached that point where the state of Minnesota has openly charged the state of New Jersey with permitting a great corporation to be organized for the express purpose of doing the very things which are forbidden by the state law of Minnesota, and directly affecting property located in Minnesota.

Interstate warfare has resulted in federal assumption of the matters in dispute where trade and commerce were unfavorably affected and thereby there became involved the "Public Welfare."

Federal Assumption.—In the very early days commerce was the subject of a state war between New York and New Jersey.

New York imposed a duty on the farm and garden products of New Jersey which came into New York. The boats of the New Jersey men were seized, their cargoes of food confiscated, if they attempted to escape the payment of this duty.

New York had put on a bit of sandy shore, now known as Sandy Hook, a lighthouse for the guidance of commerce coming into New York City.

New Jersey in retaliation taxed this at the rate of $1,800 a year.

The Supreme Court of the United States ended the war.

New York granted to Robert Fulton and others the exclusive right to operate vessels propelled by steam up and down the Hudson River and into the waters of New York Bay.

Men from other states who attempted to navigate vessels by steam from points in New Jersey to New York were enjoined by the New York courts.

The United States Supreme Court freed trade and commerce from state exactions and from interstate warfare by holding that states had no jurisdiction over what is to-day called interstate commerce, and the decision in Gibbons v. Ogden (9 Wheaton, U. S. 1) is interesting reading from a retrospective standpoint. Many other instances might be cited, but the principle is well recognized.

Demand for Better Corporation Legislation.—The advantages of a National Corporation Act are seen not alone by the doctrinaires of the schools of economics. The demand for better and higher corporation laws has advanced beyond the realms of mere academic discussion and has given rise to a practical demand in behalf of the corporations. Giving all due credit for the inception of a demand for higher corporate legislation to the student of economics, nevertheless

the corporation man is not to-day slow to perceive the advantage of better laws, national in origin, national in extent.

Corporations of Integrity Demand Better Laws.—But as I read the trend of the times, there is a feeling which is taking shape as a public demand on the part of the true industrials, on the part of those organizations which desire that their securities shall be properly deemed and held as investments, that a different state of affairs shall prevail with regard to corporate legislation.

And on the other hand, many great corporations are becoming weary of the constant demands made upon them to meet and in various ways satisfy and avert the diverse and hostile "strike" legislation of different states and territories.

The trend of matters among the corporations themselves is upward.

This movement has its origin, in part, in the desire of the sound corporation to draw a line of demarcation between itself and the corporation otherwise situated.

The corporation whose capital is truly capital, whose finances will stand publicity, and the character of whose officers recommends it to the public, knows quite well that it can give an amount of publicity, that it can make a public showing which corporations "otherwise situated" do not dare to make.

The sound corporations recognize the homely principle that a five-foot man will be drowned in crossing a stream through which a six-foot man can go with safety.

Character.—But, more than this, the public are becoming so educated as to the value of character in vast organizations that there is to-day a public demand for men of character as corporation leaders.

The public have compelled great corporations to recognize the fact that they have no character apart from the character of the men in control.

Wall Street is beginning to learn its lesson, and to find out that securities will not be absorbed by the public if they are characterized by the wrong class of leadership.

As one great organizer (and from the state of Massachusetts) said in the organization of a recent company: "I know that to-day this institution is sound, and I intend, by reason of the publicity provisions in the charter of this company, that future investors shall know whether the company is or is not sound; and I insist on the publicity provision in the charter so that if stockholders at future annual meetings are not satisfied with the propriety and integrity of the

management, they will have the right to do one of two things: either change their management, or change their investments."

As illustrative of the growth of character in these organizations, the speaker does not hesitate to refer (but without name) to one of the so-called trusts, of which it is said that when the statement of the corporation was presented to the board of directors before the annual meeting, showing a marked increase in the value of the stock of the company because, not only of its accumulations, but of its earnings, an unrecorded resolution was passed to the effect (First) that this information should not be given out by the board of directors to any one outside until it should first have been delivered to the stockholders; and (Second) what is more worthy of commendation, that it was the consensus of opinion that no director or officer of the company should avail himself of this advance knowledge to purchase any of the stock of the company on the market, before the statement was made to the public.

The demand for better administration, both practical and legal, for character in the organization, for proper publicity, for proper restrictions and control, whether proceeding from doctrinaires or millionaires, from the student of economics or from the individual investor in industrials, is but voicing the personal belief of many corporate leaders of character and integrity, who know the situation from a practical standpoint.

Facts are more important than theories. We turn, therefore, with pleasure as proof of the above assertion to the recent report of one of the large combinations, published and signed by the executive officer, which closed with this statement:

"The total number of stockholders of the company, immediately after its organization, was about 1,300. The total number now is 5,153, of which 1,860 are women. Trustees as we are for this large and constantly increasing body of stockholders, many of them women, some of them the widows and children of former associates, all of them entitled to the best service we can give them, we must and do feel that the administration of this great property is a trust of the highest and most sacred character, and while it is in our charge we shall ever strive to administer it in this spirit."

This growth along the lines of character is having its impress upon organizations, and there is a marked tendency on the part of the good to become better, and to distinguish themselves publicly from the doubtful.

Publicity.—Public opinion demands publicity, and that demand is being met by many corporations.

We find charters of great organizations voluntarily prescribing broad publicity and making it obligatory on the part of the management.

Publicity is of two kinds, public and private. "Private publicity" means the giving of full information to each stockholder. This is the first step. Public publicity means giving this information to the public at large and that, too, whether the organization be a public corporation, a *quasi* public corporation or a private company. As a matter of fact, "private publicity" is simply presenting the thin edge of the wedge, and "public publicity" is sure to follow in all cases where the proposition is a matter of interest to the public. In the case of a small corporation, with half a dozen stockholders, the information may be confined to those stockholders, but the operation is not likely to be large or to affect the public. On the other hand, if there are many stockholders and its stocks and securities are held as investments, many people will earnestly inquire about it, and by means of the enforcement of "private publicity" many people will find out the details, and therefore the country at large will know them. *Public publicity is the logical result of private publicity* in all cases where the public is interested. Publicity will give a clear insight into the operation and workings of a trust and when this is fully known the public will know how to deal with the proposition as a whole.

No man can lay down any fixed rule for the organization and maintenance of trusts generally, nor can one write of the genesis of trusts as a species, because each is organized on a different basis, by different men, with different purposes, and under different circumstances. The public assumes that in every trust there was first, the promoter; second, the financier; third, the banking syndicate; and finally, the public taking the securities or stocks.

What course has been followed in each instance by any one of the trusts no man knows fully except the men who have charge of the transactions, and these men, for professional or other reasons, decline to make their knowledge public.

In regard to the method, too, by which the different properties have been gathered into one aggregation, in almost every instance a different method has been followed, and it has been the result of a series of negotiations with a series of men.

As in the case of the financial development of the trust, so the physical development has been, in almost every instance, a proceeding peculiar to the proposition in charge.

No general rule can be formulated, no statement can be made, which would cover, with any degree of precision, the formation and history, either physical or financial, of the great combinations.

This is one of the reasons why publicity is necessary in order to deal with the trust problem, because, as a practical matter, there are more people who think they know about the way trusts are organized, financed and managed than those who really do know.

The danger comes, therefore, both to the country and the combination, that public opinion may be formulated and legislation passed, based on the opinions of those who think they know about it, while, in fact, they may be in important particulars mistaken.

This is one of the reasons, too, why industrial organizations are the more willing to have publicity, but they insist that it shall be enforced as against all if required of any.

This brings us again to the proposition that the regulation enforcing publicity or enforcing any other limitation must be by a national law and not by a state law, because if made by a state law it would apply only to the particular corporation of or in that state.

Corporate Control and Regulation not Effective Under Present System of State Legislation.—Every corporation man recognizes the proposition that to-day there is practically—meaning actually—no such thing as enforced publicity in its length and breadth throughout the nation.

Neither are many other economic demands enforced under state legislation.

State legislation is more easily controlled than national. It can be managed more quietly and more secretly.

Bills for the benefit of some particular corporation or corporations, are frequently cloaked under the disguise of a public measure.

They are amendments, so-called to existing laws, but they are actually the thrusting of new, and ofttimes evasive matters into a section of the statute in which they do not belong.

Such acts can be passed, they are passed, in state legislatures.

They are not noted by the public because they are not always commented upon by the press.

An act passed in South Dakota affecting fundamental rights of the stockholder of a great corporation, a law quietly enacted in Delaware, in West Virginia, or in Maine, might not be the subject of national discussion and national comment, and therefore, a national public opinion might not have an opportunity to be heard before its passage.

The managing editor of a great "Daily" might not censure the news department if a bill should be introduced, rushed through and passed in the legislature of South Dakota or Delaware affecting a corporation whose visible and tangible property was in Massachusetts; but should a "sneak act" affecting great corporate interests be introduced at Washington, and on the very day of its introduction the majority of the press throughout the United States not be apprised of its introduction by their correspondents at Washington, there would be trouble in the head offices.

A federal law would put all legislation, proper and improper, in a glass case and expose it to the views of the entire public, so that it is true not only that proper publicity may be obtained, but it may be maintained by the national act and not otherwise.

Upon the introduction of any corporate law under a national system the representatives of every state would be heard upon the subject, and the citizens of every state would be heard through their representative either in the National House of Representatives or in the Senate.

Public opinion of every locality would be transmitted through the representative of that locality and made an integral part, either in the opposition or the promotion of the measure.

A National Incorporation Law would truly represent and be the formulated public opinion of the nation.

The Utility of a National Law.—The question may be asked whether or not corporations would voluntarily avail themselves of this national corporation law.

I answer this question unhesitatingly in the affirmative.

The national law should contain a provision along the lines of that part of the National Banking Act which authorizes state banking institutions to become national banks, without great disturbance internal or external.

Corporations now and hereafter organized would avail themselves of a national act,

First.—For reasons of self protection. It has been already stated that it has become necessary for the sound corporations to differentiate their position from those otherwise situated.

This is shown in the tendency to publicity on the part of organizations such as the United States Steel Corporation, the National Biscuit Company and others equally entitled to mention.

It is quite necessary for sound corporations to create a public distinction involving a recognized difference between themselves

and those which are following in their wake and attempting to imitate their standing and position.

To-day mere capitalization means nothing.

Companies with an authorized capital of $50,000,000 in South Dakota cost somewhat less than the charge of an average tailor for an ordinary suit of clothes.

Second.—Financial interests will favor it.

No great corporation can be put upon the market without a financial syndicate. No matter how great or how strong is that syndicate it must go to the banks for its money.

The banks will not perpetually advance to the syndicate funds upon the underwritings or other securities. It is necessary for the financial syndicate ultimately to get to the public to relieve the banks.

The bankers know this, and the banks, therefore, would insist, before they would advance the funds, that the corporation should be organized in such a manner as would insure at least the most confidence on the part of the investing public.

The bankers would insist that the financiers organize their company under that law which would inspire the greatest public confidence in order that the public would ultimately invest.

Should the promoters refuse to do this the result would be that the banks would not advance money to the syndicate on its underwritings, and the syndicate would fail to get its holdings taken by the public, because the public would question the syndicate's action in refusing to avail itself of a national law.

Third.—Corporations would avail themselves of this law as a protection against the varied, diverse, and to-day inconsistent laws of various states.

The tendency of the states is to attack foreign corporations, and, therefore, a great corporation would avail itself of the privilege of becoming a United States corporation. Such a corporation, being foreign to no state, would secure to itself the privileges and immunities of a citizen in every state.

It would secure uniformity of legislation throughout the length and breadth of the United States.

States may drive out insurance companies, but they cannot drive national banks out, because the national bank derives its existence from a power higher than that which confers a charter upon a state-created organization.

Fourth.—No corporation engaged in interstate commerce, no corporation desiring to do business throughout the length and

breadth of the country, could afford to be other than a national organization.

It would not be long before the investing public would draw the lines sharply between state-created organizations assuming to do a business national in extent and true national corporations.

The successful combination must be in its nature a national organization in order even to pretend to carry out the economic theories upon which it is based.

Given a law which creates real national corporations, and all others would become imitators and be so known to the public. The public would refuse to take the stock of such an organization on the same principle on which it would refuse to take a counterfeit bill.

The Form of a National Act.

It is with some hesitation therefore that I suggest as a basis of discussion that a national act might contain some, if not all, of the following elements among others:

First.—It should be optional with corporations, as in the case of the National Banking Act, to organize under state acts if they choose.

Second.—The law should prohibit the use of the name "national" to any corporation but national corporations, compelling other corporations which assume that title to relinquish it.

Third.—A national corporation should be protected from state attack to the same extent to which national banks are protected, viz., it should not be subject to attachment or other provisional remedies which prevail in some states against non-residents.

Fourth.—National corporations should be assured of the privileges and immunities guaranteed to natural persons by the constitution of the United States and discrimination against them by state laws forbidden.

Fifth.—National corporations should have freedom from state supervision and should be subject to taxation by the state only to the amount of property actually in the state, and then upon the same basis as an individual.

Sixth.—The national corporation should be subject to national supervision and examination, and at least private publicity should be compulsory, which would eventually result in a proper degree of public publicity.

Seventh.—An annual report should be made by the corporation to the federal authorities, showing the *taxing situs* of all its property. Such information should be collated by some federal authority and

furnished to the taxing officers of the various states in order that the corporation might be justly and correctly taxed.

Eighth.—A national corporation should pay taxes upon all its property locally where property is situated. Its stock in the hands of stockholders might be exempted from taxation of every nature.

CONCLUSION.

In the organization and creation of our system of national banks the way was paved for an extension of this system to other corporations.

Neither the Constitution of the United States nor federal or state statutes so distinguish between banks and other corporations that the analogy cannot be reasoned out. The constitutional warrant for the national bank would seem to include a similar warrant for the industrial combination.

We have therefore before us an example of national corporations in our national bank system.

It is fitting to close this discussion with the language of one whose writings are entitled to profound respect. In his commentary upon the works of Alexander Hamilton, Mr. Henry Cabot Lodge said:

"The danger, inconvenience, and utter inefficiency of the state banks are still freshly remembered. The country groaned and chaffed under them for more than twenty years, until the Republican party came into power and established the present system of national banks. The new plan did away with the state banks by absorbing them and thus destroying the active and interested opposition which confronted the old Bank of the United States and its predecessor. The present system seems to be firmly and permanently established. It embodies Hamilton's two great principles—national banking, supervised by the central government, and a national bank currency. Hamilton's policy of national banking has become an integral part of our financial system, and has prevailed over all the attacks which have been made upon it. There is another side, however, to the question more important than its financial results. This is the constitutional argument employed by Hamilton in his cabinet opinion to which allusion has been made in a previous note. In this famous cabinet opinion Hamilton summoned to his aid the doctrine of the implied powers of the constitution, and the establishment of the bank was the first triumph of that principle which has done more than anything else to build up and strengthen the power of the national government."